

Appl. No. 10/811,272
Amdt. Dated September 26, 2006
Reply to Office Action of July 12, 2006

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REMARKS

This is a full and timely response to the non-final Office action mailed July 12, 2006. Reexamination and reconsideration in view of the foregoing amendments and following remarks is respectfully solicited.

Claims 1, 3-8, 10-16, and 18-25 are now pending in this application, with Claims 1, 8, 16, 23, 24, and 25 being the independent claims. Claims 1, 6, 8, 13, 16, 21, 23, and 24 have been amended, Claims 2, 9, and 17 have been canceled, and Claims 15 and 23 are presently withdrawn. No new matter is believed to have been added.

Finality of the Restriction Requirement

Applicant hereby acknowledges the finality of the restriction requirement, but wishes to point out the clear inconsistency in the actions of the Examiner in insisting on the restriction. As was noted in Applicant's traversal of the requirement, when inventions as disclosed and claimed are both species under a claimed genus and related, then the question of restriction must be determined by both the practice applicable to the election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 – 806.05(i). In accordance with this practice, when several patentably distinct inventions are disclosed as being related, the Examiner must establish reasons for insisting upon restriction. In particular, reasons for insisting upon restriction must be shown by an explanation of: (1) separate classification; (2) separate status in the art when classifiable together; or (3) a different field of search.

One need only look to the art cited in the instant Office action to see that there is clearly no burden in searching both embodiments, since the cited art discloses a flow duct with a venturi, the exact embodiment which was withdrawn from consideration by the Examiner. Nonetheless, Applicant is of the opinion that at least some of the independent claims as amended herein remain generic to both embodiments and, given that the amended claims are believed patentable, further believe the withdrawn claims 15 and 23 should be rejoined.

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Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 6-14, 21, and 22 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for reciting ambiguous features and/or unclear subject matter, or depending from claims that do recite such features. In particular, Claims 6, 13, and 21 are allegedly indefinite for reciting "the inlet port," and Claim 8 is allegedly indefinite for reciting that the minimum static fluid pressure is developed "adjacent" the inlet port.

In response, and while not conceding the propriety of the above-noted rejections, Applicant has cosmetically amended Claims 6, 13, and 21 to more clearly recite the "duct inlet port," and Claim 8 to more precisely state that the minimum static fluid pressure is developed "downstream" of the fluid inlet.

Applicant therefore requests reconsideration and withdrawal of the § 112, second paragraph rejections.

Rejections Under 35 U.S.C. § 102

Claims 1, 2, 4-9, 11-14, 16, 17, and 19-22 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 2,097,940 (Stalker). This rejection is respectfully traversed.

Each of the independent claims (including withdrawn Claim 23) now recites that the one or more flow limiting passage outlet ports include "a central axis that extends perpendicularly therefrom into the duct flow passageway, the central axis forming an injection angle with respect to the duct inner surface, wherein the injection angle is disposed such that the flow of fluid into and through the flow passageway is less than that of a duct that is configured substantially identical to the above-recited duct but does not include the above-recited one or more flow limiting passages." Applicant submits that this feature is neither disclosed or suggested, either expressly or inherently, in Stalker.

In particular, Stalker discloses configurations for reducing fluid resistance in a flow body. Indeed, in the embodiment that is cited in the Office action, namely the embodiment depicted in FIG. 4, Stalker explicitly discloses that the passages (4) and openings (3) are configured such that flow therethrough "energizes and thereby suppresses the boundary layer" (pg. 2, col. 1, ll.

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48-50). Stalker further teaches that by energizing and suppressing the boundary layer, "flow through any venturi is improved" (pg. 2, col. 1, ll. 55-56).

Hence, it is clear that Stalker fails to disclose, or even remotely suggest, at least the above-noted feature of independent Claims 1, 8, 16, 23, and 24. As such, anticipation of these claims, as well as any claims that depend therefrom, not been established, and reconsideration and withdrawal of the § 102 rejections is therefore solicited.

Rejections Under 35 U.S.C. § 103

Claim 24 was rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Stalker and U.S. Patent No. 3,033,307 (Sanders et al.). This rejection is respectfully traversed.

As noted above, Stalker fails to disclose at least the above-noted feature. Sanders et al. has been reviewed, and also fails to disclose at least this feature. Hence, the combination of these two references cannot render independent Claim 24 obvious, and reconsideration and withdrawal of the § 103 rejection is requested.

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the Election Requirement set forth in the above-noted Election/Restriction Requirement, and further request examination of all of the presently pending claims.

Respectfully submitted,

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